

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOSEPH MANTHA on behalf of himself
and others similarly situated,

Plaintiff,

v.

QUOTEWIZARD.COM, LLC

Defendant.

Case No. 1:19-cv-12235-LTS-PK

**PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO “PRIOR
EXPRESS CONSENT” AND ENTITLEMENT OF PLAINTIFF’S PERSONAL CELL
PHONE TO DNC PROTECTION**

Plaintiff, Joseph Mantha, seeks to represent a class of consumers who received multiple spam telemarketing texts from defendant QuoteWizard.com (“QuoteWizard”), despite the fact that putative class members previously listed their personal telephone numbers on the National Do Not Call Registry (“DNC”) explicitly warning telemarketers not to call those numbers.¹ Discovery in this matter was initially bifurcated to focus on QuoteWizard’s defenses relating to Mr. Mantha’s individual claims. Discovery on those individual claims has now ended. Mr. Mantha, accordingly and for the reasons set forth in the accompanying Memorandum of Law, petitions this Court to enter partial summary judgment in his favor on two issues: 1. Whether Mr.

¹ Although QuoteWizard still has not disclosed how many spam telemarketing texts it sent to consumers, it recently revealed that *millions* of consumers who received such spam texts on their personal telephone lines complained and took the time to respond to QuoteWizard demanding that such texts cease. *See ECF# 184, Defendant’s Notice to Court Regarding Supplemental, Corrected Production*, (QuoteWizard acknowledges error in its prior discovery responses disclosing that the number of consumers who submitted Do Not Call complaints after receiving QuoteWizard telemarketing texts was not 46,000 as represented previously to the Court, but in fact was over *two million*).

Mantha provided QuoteWizard with his prior express consent signed in writing authorizing QuoteWizard specifically to send him telemarketing texts, and 2. Whether Mr. Mantha's Wireless Number is entitled to the protections of the TCPA and the Do Not Call Registry.

PRAYER FOR RELIEF

ISSUE ONE: For the factual and legal reasons detailed in the accompanying Memorandum of Law, Mr. Mantha respectfully petitions the Court to enter partial summary judgment in his favor on the issue of consent. The issue of consent is an affirmative defense the burden of proof of which is upon QuoteWizard. Discovery has now closed on the issue of consent relating to Mr. Mantha. Mr. Mantha has denied under oath to consenting to receive QuoteWizard's telemarketing texts. QuoteWizard has failed to come forth with clear and convincing evidence demonstrating that Mr. Mantha granted QuoteWizard his prior express consent signed in writing agreeing to receive telemarketing texts from QuoteWizard, the undisputed 'seller' of the insurance products and services at issue.

ISSUE TWO: For the factual and legal reasons detailed in the accompanying Memorandum of Law, Mr. Mantha respectfully petitions the Court to enter partial summary judgment in his favor recognizing that the Wireless Number is not subscribed to a business and is, therefore, entitled to the protections afforded by the TCPA and the DNC Registry.

PLAINTIFF,

By his attorneys

/s/ Matthew P. McCue

Matthew P. McCue

THE LAW OFFICE OF MATTHEW P.
MCCUE

1 South Avenue, Suite 3

Natick, MA 01760

Telephone: (508) 655-1415

mmccue@massattorneys.net

Edward A. Broderick
BRODERICK LAW, P.C.
176 Federal Street, Fifth Floor
Boston, MA 02110
Telephone: (617) 738-7080
ted@broderick-law.com

Anthony I. Paronich
PARONICH LAW, P.C.
350 Lincoln Street, Suite 2400
Hingham, MA 02043
(508) 221-1510
anthony@paronichlaw.com

Alex M. Washkowitz
Jeremy Cohen
CW LAW GROUP, P.C.
188 Oaks Road Framingham, MA 01701
alex@cwlawgroupc.com

CERTIFICATE OF SERVICE

I hereby certify that on July 14th, 2021, I electronically transmitted the foregoing to all counsel of record via the electronic filing system.

By: /s/ Matthew P. McCue
Matthew P. McCue